

Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

	Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
2	10	945-J		Title 10, section 945-J, relating to the Maine International Trade Center	<ul style="list-style-type: none"> Maine International Trade Center (Board of Directors?) 	<ul style="list-style-type: none"> 	Amend, but hold until next year 11/13/08
3	10	975-A	2, 3	Title 10, section 975-A, subsections 2 and 3, relating to the Finance Authority of Maine	<ul style="list-style-type: none"> Finance Authority of Maine 	<ul style="list-style-type: none"> Regularly applied; 3 denials for info per year; used to go into executive session; CHANGE: CLARIFY THAT APPLIES TO PERSONALLY IDENTIFIABLE INFORMATION OF MAINE CONSUMERS 	Amend, but hold until next year 11/13/08
11.1	10	9202	1-B	Title 10, section 9202, subsection 1-B, relating to records of the Northern Maine Transmission Corporation - subject to same confidentiality provisions applicable to FAME under Title 10, section 975-A "subject to the disclosure and confidentiality provisions governing the records of the authority under section 975-A"	<ul style="list-style-type: none"> Northern Maine Transmission Corporation Finance Authority of Maine 	<ul style="list-style-type: none"> FAME: entity not active in recent years; records covered by §975-A; no changes 	OK; No change (7/30/08)
12	12	550-B	6	Title 12, section 550-B, subsection 6, relating to water well information collected by the Department of Conservation, Bureau of Geology and Natural Areas	<ul style="list-style-type: none"> Department of Conservation, Maine Geological Survey 	<ul style="list-style-type: none"> No FOA requests; exception cited few times per year No changes 	TABLED for more information, discussion

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	Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
12.2	12	549-B	5	Title 12, section 549-B, subsection 5, paragraph D, relating to investigatory and exploratory work reported under a mining permit to the Bureau of Geology and Natural areas “shall not constitute records available for public inspection or disclosure”	<ul style="list-style-type: none"> Department of Conservation, Maine Geological Survey 	<ul style="list-style-type: none"> Never invoked bring claims process (2 claims pending); no changes 	TABLED for more information, discussion
19	12	6173	1	Title 12, section 6173, subsection 1, relating to marine resources statistics	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> Approx. 6 requests per month, approx. 2 must be modified to not release confidential data; no changes 	RECOMMEND review by Judiciary Committee
21.1	12	6445		Title 12, section 6445, relating to logbooks for lobster harvesters “disclosure of any data collected under this section is subject to the confidentiality provisions of section 6173”	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> No requests; no changes 	RECOMMEND review by Judiciary Committee
22	12	6455	1-A	Title 12, section 6455, subsection 1-A, relating to market studies and promotional plans of the Lobster Promotion Council	<ul style="list-style-type: none"> Lobster Promotion Council 	<ul style="list-style-type: none"> Administered infrequently; no changes 	TABLED for more information, discussion

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	Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
22.1	12	6749-S	1	Title 12, section 6749-S, subsection 1 relating to log book for sea urchin buyers and processors “disclosure of any date collected under this section is subject to the confidentiality provisions of section 6173	<ul style="list-style-type: none"> Department of Marine Resources 	<ul style="list-style-type: none"> No FOA denials; no changes 	RECOMMEND review by Judiciary Committee
25	12	8869	13	Title 12, section 8869, subsection 13, relating to forest policy experimental areas	<ul style="list-style-type: none"> Department of Conservation, Bureau of Forestry 	<ul style="list-style-type: none"> No requests; no changes 	TABLED for more information, discussion
27	12	8884	3	Title 12, section 8884, subsection 3, relating to landowner and wood processor reporting requirements concerning volume information	<ul style="list-style-type: none"> Department of Conservation, Bureau of Forestry 	<ul style="list-style-type: none"> No requests; no change 	TABLED for more information, discussion
32	14	1254-A	7	Title 14, section 1254-A, subsection 7, relating to names of prospective jurors and contents of juror qualification forms	<ul style="list-style-type: none"> Judicial Branch Attorney General Maine Prosecutors Association Maine Association of Criminal Defense Lawyers Maine State Bar Association Maine Trial Lawyers Association 	<ul style="list-style-type: none"> JB: requests made at every jury term; seldom allow access absent compelling need; no changes AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06 	HOLD (10/06/08)

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Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
33	14 1254-A	8	Title 14, section 1254-A, subsection 8, relating to names of jury pool during the period of service of jurors and prospective jurors	<ul style="list-style-type: none"> Judicial Branch Attorney General Maine Prosecutors Association Maine Association of Criminal Defense Lawyers Maine State Bar Association Maine Trial Lawyers Association 	<ul style="list-style-type: none"> JB: requests made at every jury term; seldom allow access absent compelling need; no changes AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06 	HOLD (10/06/08)
34	14 1254-B	2	Title 14, section 1254-B, subsection 2, relating to juror selection records and information	<ul style="list-style-type: none"> Judicial Branch Attorney General Maine Prosecutors Association Maine Association of Criminal Defense Lawyers Maine State Bar Association Maine Trial Lawyers Association 	<ul style="list-style-type: none"> JB: requests frequently made but seldom granted absent compelling need; no changes AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06 	HOLD (10/06/08)

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Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
40	16		Title 16, Chapter 3, Subchapter 8: Criminal History Record Information Act	<ul style="list-style-type: none"> Attorney General Department of Public Safety Maine Prosecutors Association Maine Association of Criminal Defense Lawyers Maine Trial Lawyers Association 	<ul style="list-style-type: none"> DPS: Discussion needed; changes recommended 	HOLD
41	16	2 1-A	Title 16, section 614, subsection 2 1-A, relating to personally identifying information of persons who report cruelty to animals to the Department of Agriculture, Food and Rural Resources	<ul style="list-style-type: none"> Department of Agriculture, Food and Rural Resources 	<ul style="list-style-type: none"> Requests; no change 	HOLD
56	19-A	4	Title 19-A, section 4013, subsection 4, relating to the Domestic Abuse Homicide Review Panel	<ul style="list-style-type: none"> Attorney General 	<ul style="list-style-type: none"> Many records otherwise confidential, panel's findings released when final; no changes 	HOLD 11/13/08
69	20-A	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaint, charges and accusations concerning certification and registration of teachers (amended PL 2007, c. 666)	<ul style="list-style-type: none"> Department of Education Maine Education Association 	<ul style="list-style-type: none"> DOE: On average once a week; CONSIDER CHANGE: AMBIGUOUS AS WRITTEN 	Committee: recommend amendment, with comment 11/17/08

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SENATE

JOSEPH C. BRANNIGAN, DISTRICT 9, CHAIR
LISA T. MARRACHE', DISTRICT 25
PETER MILLS, DISTRICT 26

JANE ORBETON, LEGISLATIVE ANALYST
ELIZABETH COOPER, LEGISLATIVE ANALYST
JAN CLARK, COMMITTEE CLERK



HOUSE

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PATRICIA R. JONES, MOUNT VERNON
MARKEEVES, NORTH BERWICK
MATTHEW J. PETERSON, RUMFORD
LINDA F. SANBORN, GORHAM
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HENRY L. JOY, CRYSTAL
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DONALD G. SOCTOMAH, PASSAMAQUODDY TRIBE

STATE OF MAINE


ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

COMMITTEE ON HEALTH AND HUMAN SERVICES

MEMORANDUM

DATE: June 1, 2009

TO: Senator Barry J. Hobbins, Chair
Right to Know Advisory Committee

FROM:  Joseph C. Brannigan, Senate Chair
Anne C. Perry, House Chair
Joint Standing Committee on Health and Human Services

SUBJECT: **Review by Right to Know Advisory Committee**
LD 757, An Act to Improve the Transparency of Certain Hospitals

On April 9, 2009, the Health and Human Services Committee considered LD 757, An Act to Improve the Transparency of Certain Hospitals. Sponsored by Representative Adam Goode, this bill makes medical organizations that receive over \$250,000 annually in public funds for medical services subject specific provisions of the Freedom of Access (FOA) Laws. A copy of the bill is attached along with a copy of the bill analysis and testimony from the public hearing.

The Health and Human Services Committee is interested in initiatives that make the business operations of hospitals more transparent to the public. Therefore, we would like to learn more about the possibility of applying the public proceedings and open meetings provisions of the FOA (1 MRSA §402 and §403) to hospital board meetings and the issues we may need to consider related to our work on LD 757.

The Health and Human Services Committee has permission to carry over LD 757 to the Second Regular Session of the 124th Legislature and would like to get the opinion of the Right to Know Advisory Committee before making a decision on the bill. In particular, the HHS Committee would like the opinion of the Right to Know Advisory Committee about possible

unintended consequences of expanding the FOA laws to non-governmental entities should we move forward with the bill. We also want to get the Right to Know Advisory Committee's opinion about whether this application to non-profit hospitals is appropriate under the original intent of FOA. Finally, we welcome any suggestions for changes to the bill or other issues the Advisory Committee identifies for the HHS Committee to consider during our deliberations on the bill next year.

Thank you for your assistance with this matter and we look forward to your response.



124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 757

H.P. 516

House of Representatives, February 26, 2009

An Act To Improve the Transparency of Certain Hospitals

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative GOODE of Bangor.
Cosponsored by Senator PERRY of Penobscot and
Representatives: BUTTERFIELD of Bangor, CAMPBELL of Newfield, CHASE of Wells,
HINCK of Portland, KNIGHT of Livermore Falls, O'BRIEN of Lincolnville, ROSEN of
Bucksport, SANBORN of Gorham.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §402, sub-§2, ¶E, as amended by PL 1995, c. 608, §2, is further amended to read:

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; and

Sec. 2. 1 MRSA §402, sub-§2, ¶F, as enacted by PL 1995, c. 608, §3, is amended to read:

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter-; and

Sec. 3. 1 MRSA §402, sub-§2, ¶G is enacted to read:

G. An organization and any board, commission, committee, subcommittee or wholly or partially owned subsidiary of that organization if the organization receives over \$250,000 annually in public funds for medical services and provides medical services as its primary function.

SUMMARY

This bill makes medical organizations that receive over \$250,000 annually in public funds for medical services subject to the freedom of access laws.

SENATE

LAWRENCE BLISS, District 7, Chair
BARRY J. HOBBS, District 5
DAVID R. HASTINGS III, District 13

MARGARET J. REINSCH, Legislative Analyst
SUSAN M. PINETTE, Committee Clerk



HOUSE

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JARROD S. CROCKETT, Bethel
WAYNE T. MITCHELL, Penobscot Nation

State of Maine
ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE
COMMITTEE ON JUDICIARY

June 11, 2009

Senator Barry J. Hobbins, Chair
Right to Know Advisory Committee

Re: Treatment of Information Relating to Public Employees

The Joint Standing Committee on Judiciary had before it LD 1353, An Act Concerning Salary Information of Public Employees. The main impetus for the bill was the posting of public employee names, positions and salaries on a private organization's website. The website provided an opportunity to post comments directly associated with individuals named on the site, and public employees felt they were unfairly targeted.

The fact that publicly available information was made so easily accessible was a concern for many people. Although the testimony was overwhelmingly against enactment of the bill as written, we believe important questions need to be addressed. We voted Ought Not to Pass on LD 1353, with the understanding that we would ask the Advisory Committee to examine the following issues and make recommendations back to the Judiciary Committee in January of next year.

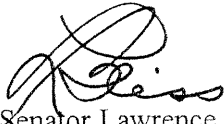
Specifically, the Judiciary Committee would like the Advisory Committee to recommend any changes that may be needed to balance the public's interest in the disclosure of the names and salaries of public employees with the privacy rights of employees. In addition to normal privacy issues, some individuals also have significant safety concerns. Victims of domestic violence and others who have a legitimate fear about their safety or the safety of their children, including participants in the Address Confidentiality Program administered by the Secretary of State, have a significant interest in protecting their whereabouts, and the release of certain public information may put them in jeopardy. We are also very concerned about law enforcement officers who work undercover or have other legitimate needs to avoid releasing identifying information to the public. We believe there may be other public employees who have a greater need for protecting

identifying information than the average public employee, and their concerns should be considered as well.

The presumption that information about public employees is public should remain, but we think there needs to be thought given to protecting certain information in special situations. We believe that the Right to Know Advisory Committee is the appropriate entity to conduct the weighing of the interests involved. We look forward to your analysis and recommendations.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Bliss".

Senator Lawrence Bliss
Senate Chair

A handwritten signature in cursive script, appearing to read "Charles R. Priest".

Representative Charles R. Priest
House Chair



124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1353

S.P. 488

In Senate, April 2, 2009

An Act Regarding Salary Information for Public Employees

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MARRACHÉ of Kennebec.
Cosponsored by Representative CROCKETT of Augusta and
Senators: BLISS of Cumberland, BOWMAN of York, President MITCHELL of Kennebec,
SIMPSON of Androscoggin, Representatives: BLODGETT of Augusta, BRYANT of
Windham, SMITH of Monmouth.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 5 MRSA §7065, sub-§5 is enacted to read:

3 5. Confidential information; public information. Salary information as it relates to
4 an individual state, county, municipal, school, University of Maine System, Maine
5 Community College System or Maine Maritime Academy employee is confidential.
6 Salary information as it relates to specified positions, identified by those positions, is
7 public information.

8 SUMMARY

9 This bill provides that salary information as it relates to an individual state, county,
10 municipal, school, University of Maine System, Maine Community College System or
11 Maine Maritime Academy employee is confidential. Salary information as it relates to
12 specified positions, identified by those positions, is public information.

EXAMPLES OF FOA EXCEPTIONS
FOR ENTITIES THAT PROVIDE LOANS, GRANTS OR OTHER FINANCIAL
ASSISTANCE TO INDIVIDUALS OR BUSINESSES

1. FAME (USED AS MODEL)
2. MTI
3. MSHA
4. ME EDUCATIONAL LOAN AUTHORITY

*12579 10 M.R.S.A. § 975-A

MAINE REVISED STATUTES ANNOTATED
TITLE 10. COMMERCE AND TRADE
PART 2. BUILDING AND DEVELOPMENT
CHAPTER 110. FINANCE AUTHORITY OF MAINE
SUBCHAPTER 1. FINANCE AUTHORITY OF MAINE ACT

*Current with emergency legislation through Chapter 1 of the 2009 First Regular Session
of the 124th Legislature*

§ 975-A. Disclosure and confidentiality of records

1. Disclosure required. Notwithstanding subsections 2 and 3 and except as provided in paragraph F, the following shall be made available to any person upon request reasonably describing the records to which access is sought or, if no request is made, in any manner and at any time which the authority may determine:

A. After filing of a written application or proposal for financial assistance or property transfer, in form specified by or acceptable to the authority:

- (1) Names of recipients of or applicants for financial assistance, including principals, where applicable;
- (2) Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;
- (3) Descriptions of projects and businesses benefiting or to benefit from the financial assistance;
- (4) Names of transferors or transferees, including principals, of property to or from the authority, the general terms of transfer and the purposes for which transferred property will be used;
- (5) Number of jobs and the amount of tax revenues projected or resulting in connection with a project;
- (6) Upon the authority's satisfaction of its loan insurance liability, the amount of any loan insurance payments with respect to a loan insurance contract; and
- (7) Names of financial institutions participating in providing financial assistance and the general terms of that financial assistance;

B. Any information pursuant to waiver deemed satisfactory by the authority;

C. Information which, as determined by the authority, has already been made available to the public;

D. Any information necessary to carry out section 1043 or 1063;

***12580** E. Information necessary to comply with Title 1, section 407, subsection 1;

F. Information or records specified in a written request signed by the chairmen of a legislative committee shall be provided to the legislative committee. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it; and

G. The annual report of the authority required pursuant to section 974.

2. Confidential information. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any record obtained or developed by the authority prior to receipt of a written application or proposal, in form specified by or acceptable to the authority, for financial assistance to be provided by or with the assistance of the authority or in connection with a transfer of property to or from the authority. After receipt by the authority of the application or proposal, a record pertaining to the application or proposal shall not be considered confidential unless it meets the requirements of other paragraphs of this subsection;

B. Any record obtained or developed by the authority which fulfills the following requirements:

(1) A person, including the authority, to whom the record belongs or pertains has requested that the record be designated confidential; and

(2) The authority has determined that information in the record gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through authority records, or that access to the information by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the authority, in the case of a person other than the authority, to any person to whom the record belongs or pertains;

C. Any financial statement or tax return of an individual or any other record obtained or developed by the authority the disclosure of which would constitute an invasion of personal privacy, as determined by the authority;

***12581** D. Any record including any financial statement or tax return obtained or developed by the authority in connection with any monitoring or servicing activity by the authority pertaining to any financial assistance provided or to be provided by or with the assistance of the authority;

E. Any record obtained or developed by the authority which contains an assessment by a person who is not employed by the authority of the credit worthiness or financial condition of any person or project;

F. Any financial statement or business and marketing plan in connection with any project receiving or to receive financial assistance from the authority pursuant only to subchapters III [FN1] or IV, [FN2] except section 1053, subsection 5, if a person to whom the statement or

plan belongs or pertains has requested that the record be designated confidential; and

G. Any record, including any financial statement, business plan or tax return obtained or developed by the authority in connection with the matching of potential investors with Maine businesses by the authority through its maintenance of a data base or other record keeping system. For purposes of this section, an application by a potential investor shall not be deemed to be an application for financial assistance.

3. Wrongful disclosure prohibited. No member, officer, employee, agent, other representative of the authority or other person may knowingly divulge or disclose records declared confidential by this section, except that the authority may, in its discretion, make or authorize any disclosure of information of the following types or under the following circumstances:

A. Impersonal, statistical or general information;

B. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person or in connection with acquiring, maintaining or disposing of property;

C. To a financing institution or credit reporting service;

D. Information necessary to comply with any federal or state law, including section 979, or rule or with any agreement pertaining to financial assistance;

E. Information to the extent the authority deems the disclosure necessary to the sale or transfer of revenue obligation securities or to the sale or transfer of bonds of the State;

*12582 F. If necessary to assure collection of any obligation in which it has or may have an interest;

G. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records declared confidential by this section; and

H. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, provided that any such order appears to have first been served on the person to whom the confidential information sought pertains or belongs and provided that any such order appears on its face or otherwise to have been issued or made upon lawful authority.

4. Records on effective date. Whether any record in the possession of the authority on the effective date of this section is confidential shall be determined pursuant to this section and not pursuant to the law in effect when the authority or any of its predecessors obtained any such record and any such record shall or may be disclosed or divulged to the extent required or permitted by this section.

CREDIT(S)

1985, c. 344, § 25; 1987, c. 697, § 3; 1989, c. 552, §§ 10, 11; 2003, c. 537, § 17, eff. Jan. 1, 2005.

[FN1] 10 M.R.S.A. § 1041 et seq.

[FN2] 10 M.R.S.A. § 1061 et seq.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1996 Main Volume

1987 Legislation

Laws 1987, c. 697, § 3, in par. D of subsec. 3, inserted ", including section 979,".

1989 Legislation

Laws 1989, c. 552, §§ 10, 11, in subsec. 2, added par. G.

Derivation:

R.S.1954, c. 38-B, § 13-A; Laws 1959, c. 157, § 5; Laws 1965, c. 471, § 9; Laws 1967, c. 345, § 5; Laws 1967, c. 345, § 5; Laws 1969, c. 584, § 1; Laws 1973, c. 633, § 21; Laws 1977, c. 489, § 12; Laws 1981, c. 476, §§ 1 to 3; Laws 1985, c. 519, § 6; Laws 1985, c. 344, § 24; former 10 M.R.S.A. §§ 852, 875, 1007; former 30 M.R.S.A. § 5340-A.

2008 Electronic Pocket Part Update

2003 Legislation

Laws 2003, c. 537, § 17, in subsec. 1, par. A, subpar. (6), substituted "loan" for "mortgage" in three places.

*12583 Laws 2003, c. 537, § 53, provides:

"Sec. 53. Effective date. This Act takes effect January 1, 2005."

REFERENCES

LAW REVIEW AND JOURNAL COMMENTARIES

A section-by-section analysis of Maine's Freedom of Access Act. Anne. C. Lucey, 43 Me.L.Rev. 169 (1991).

ANNOTATIONS

NOTES OF DECISIONS

Competitor information 1

1. Competitor information

State Finance Authority acted within its discretion in limiting disclosure of information concerning competitor, submitted within city's application for financing of construction project under Municipal Securities Approval Program. Hammond Lumber Co. v. Finance Authority of Maine (1987) Me., 521 A.2d 283. Municipal Corporations ⌘917(2); Records ⌘64

***6297 5 M.R.S.A. § 15302-A**

**MAINE REVISED STATUTES ANNOTATED
TITLE 5. ADMINISTRATIVE PROCEDURES AND SERVICES
PART 19. RESEARCH AND DEVELOPMENT
CHAPTER 407. RESEARCH AND DEVELOPMENT
SUBCHAPTER 1. MAINE TECHNOLOGY INSTITUTE**

*Current with emergency legislation through Chapter 1 of the 2009 First Regular Session
of the 124th Legislature*

§ 15302-A. Confidentiality; freedom of access

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commercial or financial information" means information related to businesses, commerce, trade, employment, profits or finances, including personal finances.

B. "Grant" means any disbursement of funds through grants or other financial awards to private companies, targeted technology incubators or nonprofit organizations, pursuant to section 15303, as well as any investment of funds, equity investment, securities, loan, contractual arrangement or other evidence of indebtedness authorized by section 15304.

C. "Trade secret" means a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.

2. Proceedings; records; confidentiality. The proceedings of the board and the records of the institute are public for the purposes of Title 1, chapter 13, except that the following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the board prior to receipt of a written application or proposal in a form acceptable to the board for either financial assistance from the board or in connection with a transfer of property to or from the board. After receipt by the board of the application or proposal, a record pertaining to the application or proposal may not be considered confidential unless it is confidential under another provision of this subsection;

B. A peer review or analysis or other document related to the evaluation of a grant application or proposal;

***6298** C. A record that the person, including the institute, to whom the record belongs or pertains has requested be designated confidential and that the institute has determined contains proprietary information, trade secrets or commercial or financial information, the release of which could be competitively harmful to the submitter of the information, could impair the institute's ability in the future to obtain similar necessary information solely through the voluntary provision of such information and could affect other institute interests, such as program effectiveness and compliance;

D. A financial statement, credit report or tax return of an individual or other record obtained or developed by the board, the disclosure of which would constitute an invasion of personal privacy as determined by the board;

E. A record, including a financial statement or tax return obtained or developed by the board in connection with monitoring or servicing activity of the board, pertaining to financial assistance provided or to be provided by or with the assistance of the board;

F. A record obtained or developed by the board that contains an assessment by a person who is not employed by the board of the creditworthiness or financial condition of a person or project;

G. A financial statement or business and marketing plan in connection with a project receiving or to receive financial assistance from the board, if the person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and

H. Those employee personnel records made confidential pursuant to section 957, subsection 5 and section 17057.

3. Wrongful disclosure prohibited. A member, officer, employee, agent, other representative of the board or other person may not knowingly divulge or disclose records declared confidential by this section, except that the board may, in its discretion, make or authorize a disclosure of impersonal, statistical or general information or may make or authorize disclosure of information:

A. If necessary in connection with processing an application for or obtaining or maintaining financial assistance for a person or in connection with acquiring, maintaining or disposing of property;

B. To a financing institution or credit reporting service;

C. If necessary to comply with any federal or state law or rule or with an agreement pertaining to financial assistance;

D. If necessary to ensure collection of an obligation in which the board has or may have an interest;

E. Obtained from records declared confidential by this section for introduction for the record in litigation or a proceeding in which the board has appeared; or

***6299** F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority.

4. Public information. Notwithstanding subsection 2, the institute shall make available the following information upon request:

A. Names and addresses of recipients of or applicants for financial assistance, including principals where applicable;

B. Amounts, types and terms of financial assistance provided to recipients or requested by applicants, including, without limitation, repayment period, security and rights of the institute to receive royalties and other payments, if any;

C. General descriptions of projects and businesses benefiting or to benefit from financial assistance;

D. Names of transferors or transferees, including principals, of property to or from the institute, the general terms of transfer, the transfer instrument or agreement and the purposes for which the transferred property will be used;

E. Number of new jobs created, the number of patents and copyrightable works produced, information identifying the patents and registered copyrightable works produced, the amount of royalties or returns on equity investments received by the institute or the amount of repayments received by the institute in connection with institute grants, except for information that would place a recipient of or an applicant for financial assistance at a competitive disadvantage;

F. Policies concerning institute governance, operations or procedures for review or funding of applications; and

G. Any information pursuant to waiver considered satisfactory by the institute.

5. Construction. This section must be strictly construed to protect the confidentiality of all documents designated as confidential, the confidentiality of which is essential to the technology development purpose of the institute and to the confidence of the private sector in the institute and its mission.

CREDIT(S)

2001, c. 562, § 2.

<General Materials (GM) - References, Annotations, or Tables>

***60739 30-A M.R.S.A. § 4706**

**MAINE REVISED STATUTES ANNOTATED
TITLE 30-A. MUNICIPALITIES AND COUNTIES
PART 2. MUNICIPALITIES
SUBPART 8. DEVELOPMENT
CHAPTER 201. HOUSING AUTHORITY
SUBCHAPTER 1. GENERAL PROVISIONS**

*Current with emergency legislation through Chapter 1 of the 2009 First Regular Session
of the 124th Legislature*

§ 4706. Records confidential

1. Confidential information. Records containing the following information are deemed confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any information acquired by an authority or a member, officer, employee or agent of an authority from applicants for residential tenancy in housing owned, financed, assisted or managed by an authority or from any residential tenants of such housing or from any 3rd person pertaining to any applicant for tenancy or to any tenant of such housing;

B. Any written or recorded financial statement, as determined by an authority, of an individual submitted to an authority or a member, officer, employee or agent of an authority, in connection with an application for, or receipt of, a grant, mortgage or mortgage insurance;

C. Any information acquired by the Maine State Housing Authority or a state public body, private corporation, copartnership, association, fuel vendor, private contractor or individual, or an employee, officer or agent of any of those persons or entities, providing services related to weatherization, energy conservation, homeless assistance or fuel assistance programs of the Maine State Housing Authority, when that information was provided by the applicant for, or recipient of, those services or by a 3rd person;

D. Any statements of financial condition or information pertaining to financial condition submitted to any of the persons or entities set forth in paragraph C in connection with an application for services related to weatherization, energy conservation, homeless assistance or fuel assistance programs of the Maine State Housing Authority; and

E. The address of a shelter or other living accommodations for victims of domestic violence.

2. Wrongful disclosure prohibited. No member, officer, employee or agent of an authority may knowingly divulge or disclose information declared confidential by this section, except that:

***60740** A. An authority may make such full and complete reports concerning administration of its programs as required by the Federal Government, any agency or department of the Federal Government, or the Legislature;

B. An authority may publish statistics or other information of a general nature drawn from information declared confidential by this section, provided that the publication is

accomplished in a manner which preserves confidentiality;

C. An authority may comply with a subpoena, request for production of documents, warrant or court order that appears on its face to have been issued or made upon lawful authority;

D. In any litigation or proceeding in which an authority is a party, the authority may introduce evidence based on any information that is deemed confidential and is within the control or custody of the authority; and

E. Any person or agency directly involved in the administration or auditing of weatherization, energy conservation or fuel assistance programs of the Maine State Housing Authority and any agency of the State with a legitimate reason to know must be given access to those records described in subsection 1, paragraphs C and D.

3. Waiver. This section shall not be construed to limit in any way the right of any person whose interest is protected by this section to waive, in writing or otherwise, the benefits of that protection.

4. Penalty. A member, officer, employee or agent of an authority who violates subsection 2 commits a civil violation for which a forfeiture of not more than \$200 may be adjudged against the member, officer, employee or agent of an authority for each violation. For the purpose of applying penalties under this subsection, a separate violation is deemed to have occurred with respect to each separate act of disclosure.

CREDIT(S)

1987, c. 737, § A, 2; 1993, c. 175, §§ 1 to 4; 2007, c. 562, §§ 1 to 4.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1996 Main Volume

Amendments

1993 Amendment. Laws 1993, c. 175, §§ 1, 2, in subsec. 1, added pars. C and D.

Laws 1993, c. 175, § 3, in subsec. 2, par. A, deleted reference to reports concerning administration of federal housing, and added reference to such reports as required by any agency or department of the Federal Government, or the Legislature.

*60741 Laws 1993, c. 175, § 4, in subsec. 2, added par. E.

Derivation:

Laws 1977, c. 256, § 1; Laws 1983, c. 414, §§ 3, 4; Laws 1987, c. 737, § A, 1; former 30 M.R.S.A. § 4557.

2008 Electronic Pocket Part Update

2007 Legislation

Laws 2007, c. 562, § 1, in subsec. 1, in par. B, inserted ", or receipt of," following "application for" and "grant," preceding "mortgage or".

Laws 2007, c. 562, § 2, in subsec. 1, in par. C, inserted ", or receipt of," following "application for", and deleted "and" at the end thereof.


Laws 2007, c. 562, § 3, in subsec. 1, in par. D, substituted "; and" for a period at the end thereof.

Laws 2007, c. 562, § 4, in subsec. 1, added par. E.

REFERENCES

LIBRARY REFERENCES

1996 Main Volume

Duty to make and keep public records; public access to records, see Records  2 et seq., 30 et seq.

Duty to make and keep public records; public access to records, see C.J.S. Records §§ 4 et seq., 60 et seq.

***38225 20-A M.R.S.A. § 11418**

**MAINE REVISED STATUTES ANNOTATED
TITLE 20-A. EDUCATION
PART 5. POST-SECONDARY EDUCATION
CHAPTER 417-A. MAINE EDUCATIONAL LOAN AUTHORITY**

*Current with emergency legislation through Chapter 1 of the 2009 First Regular Session
of the 124th Legislature*

§ 11418. Records confidential

1. Confidential information. Records containing any information acquired by the authority or a member, officer, employee or agent of the authority from applicants for or recipients of financial assistance provided pursuant to a program administered or established by the authority shall be deemed confidential for purposes of Title 1, section 402, subsection 3, paragraph A.

2. Wrongful disclosure prohibited. No member, officer, employee, agent, other representative of the authority or other person may knowingly divulge or disclose records declared confidential by this section, except that the authority may, in its discretion, make or authorize any disclosure of information of the following types or under the following circumstances:

- A. Impersonal, statistical or general information;
- B. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person or in connection with acquiring, maintaining or disposing of property;
- C. To a financial institution or credit reporting service;
- D. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;
- E. Information to the extent the authority deems the disclosure necessary to the sale or transfer of its bonds;
- F. If necessary to assure collection of any obligation in which it has or may have an interest;
- G. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records declared confidential by this section; and
- H. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, provided that any such order appears to have first been served on the person to whom confidential information sought pertains or belongs and provided that any such order appears on its face or otherwise to have been issued or made upon lawful authority. ***38226**

CREDIT(S)

1987, c. 807, § 3, eff. April 28, 1988.

<General Materials (GM) - References, Annotations, or Tables>

REFERENCES

CROSS REFERENCES

Freedom of access, public records, see 1 M.R.S.A. § 401 et seq.

REFERENCES

LIBRARY REFERENCES

2008 Main Volume

Colleges and Universities ☞ 9.25(2).

Westlaw Topic No. 81.

C.J.S. Civil Rights §§ 122, 140.

C.J.S. Colleges and Universities §§ 29, 33 to 34.

**INTERNSHIP PROPOSAL
RIGHT TO KNOW ADVISORY COMMITTEE
For Spring 2009**

The Right to Know Advisory Committee was created by the Legislature and charged with ensuring the integrity of the Freedom of Access laws and their underlying principles. The ongoing duties of the permanent Advisory Committee are listed in Title 1, the Maine Revised Statutes, section 411. The Legislative Council provides staff to the Advisory Committee through the Office of Policy and Legal Analysis, but only when the Legislature is not in Regular or Special Session. The extern will have the opportunity to provide direct staffing services to the Advisory Committee as well as assisting the Advisory Committee in carrying out its duties. The webpage for the Advisory Committee: <http://www.maine.gov/legis/opla/righttoknow.htm>.

The extern will work under the supervision of the Chief Deputy Attorney General, who currently serves as a member of the Right to Know Advisory Committee, in consultation with the Chair of the Advisory Committee. The extern may also act as liaison between the Advisory Committee and the Governor's Office, the designated FOA contact persons for state agencies and departments and organizations representing public officials.

General responsibilities may include analyzing policy and legal issues for the Advisory Committee, drafting legislation, conducting research and preparing study reports related to Freedom of Access laws in Maine and other states. The extern may act as liaison between the Advisory Committee and the Joint Standing Committee on Judiciary, as well as other committees of the Legislature, and their staff.

The Advisory Committee has identified three specific activities with which the extern may assist.

- The first activity is review of existing public records exceptions. The Advisory Committee is required to review and make recommendations about the continuance, modification or repeal of statutory public records exceptions. The recommendations are to be considered by the Judiciary Committee of the Legislature.
- The second activity is review of proposed legislation for new public records exceptions. At the request of the Judiciary Committee, the Advisory Committee provides assistance in the review and consideration of proposed public records exceptions in legislation presented in a Regular or Special Session. The extern may be asked to work with the Judiciary Committee to provide analysis of the policy and legal issues associated with proposed public records exceptions.
- The third activity is research and analysis of federal law and laws in Maine and other states regulating the use, disclosure and confidentiality of Social Security numbers contained in public records maintained by government agencies.

Reinsch, Margaret

From: Richard Flewelling [rflewelling@memun.org]
Sent: Wednesday, June 24, 2009 3:26 PM
To: Reinsch, Margaret
Subject: RE: Right to Know Advisory Committee
Attachments: BOARD MEETING MINUTES.docx

Dear Peggy,

As you know, I will not be able to attend next Tuesday's Right to Know Advisory Committee meeting. However, I want to give you (and the Committee) a brief update on MMA's efforts over the past year to promote Right to Know training for local elected officials (item #5 on Tuesday's agenda).

Since the Legislature mandated Right to Know training in 2007, our monthly magazine, the *Maine Townsman*, has included at least three announcements describing the requirement and advising local officials how they can satisfy it. The magazine is mailed to all selectmen and councilors and town and city clerks. It is also available on our website to all municipal officials. In addition, this announcement was included in several issues of our monthly e-mail newsletter, *MMA Today*. The newsletter is sent automatically to almost 3,000 subscribing local officials.

Also, at MMA's annual convention last October we offered Right to Know training sessions on two separate days, with a total of about 200 local officials attending. We plan to do the same thing at this year's annual convention, also in October. This is in addition to the Right to Know training we routinely offer (and have offered for many years) during our newly elected officials workshops, which we hold multiple times a year at locations around the state. Since last July (when the new training requirement took effect), several hundred local officials have received their training at these workshops.

Of course, most officials know they can satisfy the training requirement by visiting the State's FOAA website, but many prefer an interactive experience, so we will continue to offer and aggressively market Right to Know training at our annual convention and at our workshops for the indefinite future.

On a different note (item #6, third bullet, on Tuesday's agenda), I've attached an article I wrote on meeting minutes for the July 2009 issue of the *Maine Townsman*. The agenda item refers to "statutory requirements," so I thought I'd share with you what I've found for statutory requirements insofar as *municipal* board meetings are concerned. Hope it helps.

Best regards,

Richard P. Flewelling, Assistant Director
Legal Services Department
Maine Municipal Association
60 Community Drive, Augusta, ME 04330
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From: Reinsch, Margaret [mailto:Margaret.Reinsch@legislature.maine.gov]
Sent: Wednesday, June 24, 2009 11:27 AM

6/25/2009

To: bhobbins@hggm.net; Black, Karla; bgdevlin@kennebecso.com; islandhousingtrust@roadrunner.com; cjspruce@gmail.com; dawn@dawnhill.org; econrad@centralmaine.com; Glessner, James T.; hrpringle@dwmlaw.com; jmeyer@sunjournal.com; mal@mainecapitolnews.com; dion@cumberlandcounty.org; maryann.nowak@maine.edu; maureen.obrien@wcsh6.com; McCarthyReid, Colleen; Pistner, Linda; corona@cumberlandcounty.org; Reinsch, Margaret; Richard Flewelling; Shenna Bellows; suzanne@mab.org
Subject: Right to Know Advisory Committee

Draft agenda for meeting on Tuesday, June 30th.

<<DRAFT AGENDA for June 30 2009.doc>>

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BOARD MEETING MINUTES

Question: Are municipal boards legally required to take minutes of their meetings?

Answer: As a general rule, no. State law does not require minutes or a record of most municipal board meetings. But here are some important exceptions:

Board of appeals meetings. The secretary of the board must maintain a permanent record of all board of appeals meetings, including a transcript or tape recording, if made, and all papers, exhibits, applications and decisions, including findings and conclusions (see 30-A M.R.S.A. § 2691(3)). A board of assessment review is also governed by these requirements (see 30-A M.R.S.A. § 2526(6)(G)).

Conditional approval or denial of applications. Maine's Freedom of Access Act ("Right to Know" law) requires a written record of every decision by any board or official involving the conditional approval or denial of an application, license, certificate or any other type of permit, with findings and reasons (see 1 M.R.S.A. § 407(1)).

Dismissal or refusal to renew contracts. The Right to Know law also requires a written record of every decision involving the dismissal or refusal to renew the contract of any public official, employee or appointee, again, with findings and reasons (see 1 M.R.S.A. § 407(2)).

Conflicts of interest. Any official with a financial ("pecuniary") conflict of interest must disclose it and abstain from participating in the decision in which the official has a conflict. This disclosure and abstention must be recorded with the municipal clerk (see 30-A M.R.S.A. § 2605(4)).

Executive sessions. A motion to go into executive session must be approved by a public, recorded vote of 3/5 of the members present and voting (see 1 M.R.S.A. § 405(3)). The motion must also indicate the precise nature of the business to be discussed and cite the legal authority for the executive session. (There is no requirement for minutes or a recording of the executive session itself, however, and we generally recommend against it.)

General assistance fair hearings. The general assistance fair hearing authority must make a tape recording of every fair hearing (see 22 M.R.S.A. § 4352). The applicant must pay the cost of preparing any transcript required to appeal the decision, however. (All records and proceedings relating to general assistance are of course strictly confidential, see 22 M.R.S.A. §§ 4306, 4321.)

Even though minutes are not generally required, we strongly recommend them as a way of accurately recording the decisions of a board. Minutes need not be overly detailed. The time and date of the meeting, the members in attendance, the business discussed, and the motions made and votes taken should be sufficient in most cases. Where specific findings are required, however, a mere narrative of the discussion will not suffice (see "Minutes Are Not 'Findings'," *Maine Townsman*, "Legal Notes," July 2007).

Where minutes are taken, they will generally be public records. (Notable exceptions include records of general assistance, poverty abatement and concealed weapons proceedings.) Minutes that have yet to be approved by a board (if that is the custom) may be marked “draft” before being made available to the public. They cannot be withheld simply because they have not been approved yet, however.

Minutes are also subject to the State Archives Advisory Board’s rules for disposition of local government records (see “Disposition of Records,” *Maine Townsman*, “Legal Notes,” May 2009). According to the rules, official minutes of board meetings must be retained permanently.

For more on any of these subjects, use the keyword(s) search feature on our website at www.memun.org. (By R.P.F.)

Memo

To: Linda Pistner
From: Heidi M. Pushard
CC: Colleen McCarthy-Reid
Margaret Reinsch
Date: 6/29/2009
Re: Social Security Number Confidentiality

A review of existing federal and state laws, as well as actions of other states to maintain SSN privacy reveals the following information:

The Social Security Act Amendment of 1990 requires that SSNs obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990, be kept confidential.¹ To date, no regulations have been promulgated to implement the provision.²

GAO Study: Issues Identified³

- State FOA laws cited as primary reason for making records available.
- Some companies commonly send public records data for processing to at least two countries – India and the Philippines.
 - Bulk transfer of records raises other concerns about security of SSNs
 - Record keepers do not or cannot restrict the types of entities that can obtain public records and may not know how the records are being used
 - Little is known about how records sent overseas are protected

¹ 42 U.S.C. § 405(c)(2)(C)(viii).

² Although SSA has general rulemaking authority with respect to this provision, it has not explored the extent of this authority. In addition, SSA officials stated that even if SSA were to promulgate regulations under this provision, it does not have the authority to enforce them. FTC does not have authority under the amendment, according to FTC staff.

³ GAO, *Social Security Numbers: Transfers and Sales of Public Records That May Contain Social Security Numbers*, an E-supplement to GAO-08-1009R, GAO-08-1004SP (Washington, D.C.: Sept 19, 2008).

- No federal laws that restrict state or local governments from making records available in bulk or governing how private entities may use SSNs obtained from public records, including offshoring of records with SSNs.

Methods in Use to Protect SSNs

- Redaction or truncation of publically available versions of recorded documents; full SSNs retained in nonpublic versions that are not available online or for bulk purchase

Actions to Limit Availability of SSNs in Public Records

- IRS and DOJ are truncating SSNs in liens and other records that are filed with county record keepers⁴
- Some states mandating truncation
 - California – recorders must begin truncating SSNs in publicly available records between 1980 and 2008. For records filed on or after January 1, 2009, recorders are required to truncate SSNs in the public versions of filings. They can petition their county board of supervisors for authority to charge additional fees
 - Florida – Since 2002, officials have been required to redact SSNs in records upon written request of the SSN holder, and parties filing documents have generally been required to exclude SSNs. SSNs in electronic records must be kept confidential beginning in 2011.
 - Other states have narrower requirements – Virginia law authorizes circuit court clerks to redact SSNs from certain land records and provides that they may receive reimbursement for this effort from a state trust fund.
- Other states taking initiative to redact or truncate without mandate in response to privacy concerns
- 11 states have taken steps to remove SSNs from public documents, unless SSNs are required by federal law to be included in those records⁵
- 24 states have passed laws to protect individuals' SSNs from being on public documents⁶
- Within these two groups, there is variation in the scope and applicability of these laws. For example:

⁴ GAO, *Social Security Numbers: Federal Actions Could Further Decrease Availability in Public Records, though Other Vulnerabilities Remain*, GAO-07-752, (Washington, DC., June 15, 2007).

⁵ Office of the Inspector General, Social Security Administration, *State and Local Governments' Collection and Use of Social Security Numbers*, September 2007, A-08-07-17086.

⁶ *Id.*

- Some states, such as New Jersey and Ohio, prohibit SSNs from appearing in any publicly recorded document
 - Others limit the requirement to specific types of records; for example, Kansas and Utah prohibit SSNs from being shown in voter registration records
- Certain states allow individuals to request that their SSNs be removed from public records

As we discussed in our meeting last week, Indiana Code 4-1-10⁷, enacted in 2006, deals with the release of social security numbers by state agencies. Although the law does not specifically designate the records as “confidential,” it is overarching and prohibits disclosure except in cases where explicitly permitted. Examples of permitted disclosure include when the underlying individual gives written consent, where required by federal or state law, where required by court order, or when administering health benefit plans. I believe the language of the Indiana statute could be easily adapted for use in Maine and that it is a good model for Maine to consider as it works to find a balance between individuals’ rights of privacy and the public’s freedom of access to information.

Much of the policy deliberations on limiting the display of SSNs appear to take great pains in considering and balancing the need to keep SSNs confidential and the longstanding tradition of open access to records, as well as the rights of states and localities to regulate the availability of their records. Recent federal and states actions to truncate SSNs represent one effort that may strike an appropriate balance between protecting SSNs from issue and making a portion available to appropriate parties to firmly establish the identity of specific individuals.

Please let me know if there is further information I can provide in this area or if you could like to further discuss my findings.

⁷ Available electronically at <http://www.in.gov/legislative/ic/code/title4/ar1/ch10.html>

**Information Maintained by the Office of Code Revision Indiana Legislative Services
Agency**

03/05/2009 12:30:12 PM EST

IC 4-1-10

Chapter 10. Release of Social Security Number

IC 4-1-10-1

Applicability

Sec. 1. This chapter applies after June 30, 2006.

As added by P.L.91-2005, SEC.1.

IC 4-1-10-1.5

"Person"

Sec. 1.5. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or other legal entity.

As added by P.L.160-2007, SEC.1.

IC 4-1-10-2

"State agency"

Sec. 2. As used in this chapter, "state agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of the executive, including the administrative, department of state government. Except as provided in subdivision (4), the term does not include the judicial or legislative department of state government. The term includes the following:

- (1) A state elected official's office.
- (2) A state educational institution.
- (3) A body corporate and politic of the state created by state statute.
- (4) The Indiana lobby registration commission established by IC 2-7-1.6-1.

As added by P.L.91-2005, SEC.1. Amended by P.L.2-2007, SEC.18.

IC 4-1-10-3

Nondisclosure of Social Security number

Sec. 3. (a) For purposes of this section, disclosure of the last four (4) digits of an individual's Social Security number is not a disclosure of the individual's Social Security number.

(b) Except as provided in section 4 or 5 of this chapter, a state agency may not disclose an individual's Social Security number.

As added by P.L.91-2005, SEC.1.

IC 4-1-10-4

Exceptions to nondisclosures of Social Security number

Sec. 4. Unless prohibited by state law, federal law, or court order, the following apply:

(1) A state agency may disclose the Social Security number of an individual to a state, local, or federal agency.

(2) A state law enforcement agency may, for purposes of furthering an investigation, disclose the Social Security number of an individual to any individual, state, local, or federal

agency, or other legal entity.
As added by P.L.91-2005, SEC.1.

IC 4-1-10-5

Permitted disclosures of Social Security number

Sec. 5. (a) A state agency may disclose the Social Security number of an individual if any of the following apply:

(1) The disclosure of the Social Security number is expressly required by state law, federal law, or a court order.

(2) The individual expressly consents in writing to the disclosure of the individual's Social Security number.

(3) The disclosure of the Social Security number is:

(A) made to comply with:

(i) the USA Patriot Act of 2001 (P.L. 107-56); or

(ii) Presidential Executive Order 13224; or

(B) to a commercial entity for the permissible uses set forth in the:

(i) Drivers Privacy Protection Act (18 U.S.C. 2721 et seq.);

(ii) Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(iii) Financial Modernization Act of 1999 (15 U.S.C. 6801 et seq.).

(4) The disclosure of the Social Security number is for the purpose of administration of a state agency employee's or the state agency employee's dependent's health benefits.

(5) The disclosure of the Social Security number is for the purpose of administration of:

(A) a pension fund administered by the board of trustees of the public employees' retirement fund;

(B) the Indiana state teachers' retirement fund;

(C) a deferred compensation plan or defined contribution plan established under IC 5-10-1.1;

(D) a pension plan established by the state police department under IC 10-12; or

(E) the Uniform Commercial Code (IC 26-1) by the office of the secretary of state.

(b) A state agency's disclosure of the Social Security number of an individual in compliance with subsection (a) does not violate IC 5-14-3-4(a)(12).

As added by P.L.91-2005, SEC.1. Amended by P.L.29-2006, SEC.1; P.L.106-2008, SEC.1.

IC 4-1-10-5.5

Disclosure of Social Security number by state educational institution

Sec. 5.5. Unless prohibited by state law, federal law, or a court order, the following apply:

(1) A state educational institution may disclose, in addition to the disclosures otherwise permitted by this chapter, a Social Security number of an individual to the following:

(A) A state, local, or federal agency or a person with whom a state, local, or federal agency has a contract to perform the agency's duties and responsibilities.

(B) A person that the state educational institution contracts with to provide goods or services to the state educational institution if:

(i) the disclosure is necessary for the contractor to perform the contractor's duties and responsibilities under the contract; and

(ii) the contract requires adequate safeguards, including any safeguards required by state or federal law, to prevent any use or disclosure of the Social Security numbers for any purpose other than those purposes described in the contract and to require the return or confirmed destruction of any Social Security numbers following termination of the contractual relationship.

(C) Persons to whom the state educational institution may otherwise legally disclose for the permissible purposes of the following:

(i) The Family Education Rights and Privacy Act (20 U.S.C. 1232g et seq.).

(ii) The Health Insurance Portability and Accountability Act (42 U.S.C. 201 et seq.).

(D) The state educational institution's legal counsel, but only to the extent that a state educational institution could disclose a Social Security number to an in-house counsel.

(2) Consent for the authorized disclosure of any individual's Social Security number may be given to a state educational institution by electronic transmission if the state educational institution is reasonably able to verify the authenticity of the consent. A state educational institution may rely on the written consent of an individual given to a third party if the consent expressly permits the disclosure of the individual's Social Security number by the state educational institution.

As added by P.L.160-2007, SEC.2.

IC 4-1-10-6

State agency compliance

Sec. 6. A state agency complies with section 3 of this chapter if the agency:

(1) removes; or

(2) completely and permanently obscures;

a Social Security number on a public record before disclosing the public record.

As added by P.L.91-2005, SEC.1.

IC 4-1-10-7

Impermissible disclosure of Social Security number; required notice

Sec. 7. If a state agency releases a Social Security number in

violation of this chapter, the agency shall provide notice to the person whose Social Security number was disclosed in the manner set forth in IC 4-1-11.

As added by P.L.91-2005, SEC.1.

IC 4-1-10-8

Criminal disclosures of Social Security number; Class D felony

Sec. 8. An employee of a state agency who knowingly, intentionally, or recklessly discloses a Social Security number in violation of this chapter commits a Class D felony.

As added by P.L.91-2005, SEC.1.

IC 4-1-10-9

False representation to obtain Social Security number; Class D felony

Sec. 9. A person who knowingly, intentionally, or recklessly makes a false representation to a state agency to obtain a Social Security number from the state agency commits a Class D felony.

As added by P.L.91-2005, SEC.1.

IC 4-1-10-10**Negligent disclosure of Social Security number; Class A infraction**

Sec. 10. An employee of a state agency who negligently discloses a Social Security number in violation of this chapter commits a Class A infraction.

As added by P.L.91-2005, SEC.1.

IC 4-1-10-11**Attorney general investigation of disclosures; notice to county prosecutor and state police**

Sec. 11. (a) The attorney general may investigate any allegation that a Social Security number was disclosed in violation of this chapter.

(b) If the attorney general determines that there is evidence that a state employee committed a criminal act under section 8 or 9 of this chapter, the attorney general shall report the attorney general's findings to:

- (1) the prosecuting attorney in the county where the criminal act occurred; and
- (2) the state police department.

As added by P.L.91-2005, SEC.1.

IC 4-1-10-12**Attorney general determination of infraction; report to appointing authority and county prosecutor**

Sec. 12. If the attorney general determines that there is evidence that a state employee committed an infraction under section 10 of this chapter, the attorney general:

(1) shall report the attorney general's findings to the appointing authority (as defined in IC 4-2-6-1) of the agency that employs

the employee; and

(2) may report the attorney general's findings to the local prosecuting attorney in the county where the infraction occurred.

As added by P.L.91-2005, SEC.1.

IC 4-1-10-13**Attorney general rulemaking authority**

Sec. 13. The attorney general may adopt rules under IC 4-22-2 that the attorney general considers necessary to carry out this chapter.

As added by P.L.91-2005, SEC.1.

**DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
78 STATE HOUSE STATION
AUGUSTA, ME 04333-0078**

**PHONE: 207-624-7800
FAX: 207-624-7804
TDD: 207-287-4537**

Health & Human Services



Commissioner's Office

MEMORANDUM

TO: Commissioners and Agency Heads
FROM: Ryan Low, Commissioner DAFS *RL*
DATE: October 31, 2008
SUBJ: Social Security Number Usage and Security

*cc
IMT
ELT
Marina Shibeau*

.....

During the First Legislative Session of the 123rd Legislature, there were two bills that sought to eliminate the use of Social Security Numbers by state government. Both LD 1017, An Act to Protect Citizens' Privacy and LD 1453, Resolve, Regarding the Privacy of Social Security Numbers were voted out not to pass by the Joint Standing Committees on State and Local Government and Judiciary, respectively. However, both Legislative Committees asked that the Department of Administrative and Financial Services contact all state agencies to ensure that state government is appropriately maintaining and providing appropriate security when Social Security Numbers are utilized and stored, through both electronic and paper processes.

Additionally, the Judiciary Committee requested that we further encourage state agencies to review the usage of Social Security Numbers to ensure that these personal identification numbers are only requested when required by federal or state law, and to take steps to eliminate any casual use. If you have any questions regarding this issue as it relates to information technology (IT) or IT security, please contact the state's Chief Information Officer, Richard Thompson.

I know that each agency understands the importance of safeguarding confidential information, consistent with state and federal laws.

Cc: R. Thompson, CIO



Administrative Office of the Courts

James T. Glessner
State Court Administrator
125 Presumpscot Street (zip 04103)
P.O. Box 4820
Portland, Maine 04112-4820

Telephone: (207) 822-0792
FAX: (207) 822-0781
TTY: (207) 822-0701

March 23, 2009

Peggy Reinsch
c/o OPLA
13 State House Station
Augusta, Maine 04333-0013

RE: Social Security Numbers

Dear Peggy,

Attached is a letter that was originally drafted several months ago to the Chairs of the Right to Know Advisory Committee, addressing a concern on the part of the Judicial Branch with regard to the confidentiality of social security numbers. The Right to Know Advisory Committee has agreed that the issue of social security numbers will be taken up at some point. Unfortunately, we are in a state of transition with regard to our legislative committee members, who are also the Chairs of the Committee. Nonetheless, I am anxious to have on record a statement of the concern about this issue that exists for the Judicial Branch. We hope that the Committee will soon have an opportunity to take this up. In the meantime I am writing to you with a request that we bring this to the attention of the Committee. Thank you for your assistance.

Sincerely,

James T. Glessner

JTG/dl



Administrative Office of the Courts

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State Court Administrator
125 Presumpscot Street (zip 04103)
P.O. Box 4820
Portland, Maine 04112-4820

Telephone: (207) 822-0792
FAX: (207) 822-0781
TTY: (207) 822-0701

March 23, 2009

Right to Know Advisory Committee
Attn: Peggy Reinsch
OPLA
13 State House Station
Augusta, Maine 04333-0013

The issue of the confidentiality of social security numbers is something that has been identified as a concern by the Right to Know Advisory Committee. I believe that we determined that it was an issue of such magnitude and seriousness that rather than asking a sub-committee to work on it, it should be reviewed by the committee as a whole.

The Judicial Branch has been grappling with this issue for some time. Our dilemma is that we see the availability of social security numbers as a problem for the public in this time when identity theft has grown to such serious proportions. We are concerned that the availability of this information, in court files, can be contributing to the problem in a significant way. We have considered the number of approaches, but they are time intensive and in a time of diminishing staff resources we are not in a position to take on this additional responsibility. The overarching concern is that there is no statutory provision which makes social security numbers confidential. There are specific circumstances where they are protected; there are also circumstances where state law requires that social security numbers be provided as part of court proceedings.

There appears to be considerable support for making social security numbers confidential under state law. It is my understanding that in the past such legislation was not enacted because of the large fiscal note that would accompany enactment of such legislation, particularly if the legislation required agencies to go back, retrospectively, and remove social security numbers that exist in the files.

The purpose of this letter is primarily to alert the committee that the Judicial Branch of government is struggling with the same issue that confronts the rest of state government, and that we have not been able to identify the resources to address this issue especially when there is no statutory mandate to do so. We look forward to the work to be done by this committee and its ultimate recommendation to the Judiciary Committee in the hope that the legislature will be able to take some definitive action.

Sincerely,

James T. Glessner

JTG/dl

(10)

**STATE OF MAINE
SUPREME JUDICIAL COURT**

ADMINISTRATIVE ORDER JB-09-2

**ACCESS TO SOCIAL SECURITY NUMBERS AND
QUALIFIED DOMESTIC RELATIONS ORDERS (“QUADROS”)**

Effective: April 1, 2009

I. SCOPE AND PURPOSE

There is often a need for the Judicial Branch to collect Social Security Numbers (SSNs). It is the goal of the Judicial Branch to reduce the possibility of identity theft through use of court records and the Judicial Branch now intends to allow access to Social Security Numbers only to organizations, entities, and individuals with a demonstrated need to possess them. Because the Judicial Branch has neither the staff nor the resources to redact Social Security Numbers from all files, it has developed a protocol to segregate that information in incoming court files.

This Administrative Order does not apply to the Maine Violations Bureau.

II. PROTOCOL

Beginning on the effective date of this Order, when disclosure of an SSN is required in any court proceeding, and the SSN is to be maintained in a case file in the office of the Clerk of Court, individuals will record their Social Security Numbers only on specific forms provided by the Court for that purpose. The forms, and all QUADROS filed after this date, shall be maintained by the Clerk of Court in a separate, sealed envelope in the case file, and shall not be disclosed or provided to any other person unless specifically provided by court order or the exceptions noted below.

III. ACCESS TO INFORMATION

A. The following individuals, organizations, and entities may obtain access to SSNs maintained in court files pursuant to this Administrative Order without obtaining a specific court order:

- The person whose SSN is on the document;
- An attorney who appears on behalf of the person who entered a SSN in a court file pursuant to this Administrative Order;
- A DHHS representative in Family Matter cases involving child support (*See, e.g.*, 19-A M.R.S. § 2006(10));
- A prosecutor, law enforcement officer, representative of any correctional facility or official court financial screener AND the request is made by that person in their official capacity;
- A representative of an agency that is providing pretrial services to the person in a pending court matter may have access to the SSN of that person if that person has entered a SSN in a court file pursuant to this Administrative Order AND the request is made by that person in their official capacity.

B. The following individuals or organizations may obtain a copy of a QUADRO:

- A person who was a party in the case in which the QUADRO was entered;
- An attorney representing a person who was a party in the case in which the QUADRO was entered;
- A representative of an organization issuing or maintaining the QUADRO account.

For the Court,

/s/

Leigh I. Saufley
Chief Justice

Promulgation Date: April 28, 2009

12

RIGHT TO KNOW ADVISORY COMMITTEE DRAFT

IS AN ENTITY OR INDIVIDUAL AN “AGENCY OR PUBLIC OFFICIAL” FOR PURPOSES OF THE FREEDOM OF ACCESS LAW?

In the *Moore v. Abbott* (Me. Supreme Judicial Court, 2008 ME 100) decision by a vote of 3-2, the Law Court reaffirmed its use of a functional equivalency test to evaluate whether an entity or individual, alone or collectively, qualifies as “an agency or public official” under 1 MRSA § 402, sub-§ 3 so that records of that agency or public official are subject to public inspection and disclosure under the Freedom of Access laws. The functional equivalency test used by the Law Court was first adopted in *Town of Burlington v. Hosp. Admin. Dist. No. 1*, 2001 ME 59, 769 A.2d 857).

The four-part test requires the application of the following factors; however, the description of the four factors was expressed differently in the written majority and dissenting opinions in the *Moore v. Abbott* decision. See outline below. The court did not require that an entity conform to all factors, but considered and weighed the factors.

<i>Town of Burlington v. Hosp. Admin. Dist. No. 1</i> Opinion (Alexander filed concurring opinion)	<i>Moore v. Abbott</i> Majority Opinion (Alexander, Silver and Gorman)	<i>Moore v. Abbott</i> Dissenting Opinion (Levy and Mead)
1. Whether the entity performs a government function	1. Whether the entity is performing a governmental function	1. Whether the entity performs a government function
2. Whether the funding of the entity is governmental	2. Whether the funding of the entity is governmental	2. Whether the government funds the entity
3. The extent of government involvement or control	3. The extent of governmental involvement or control	3. The extent of governmental involvement or control
4. Whether the entity was created by private or legislative action	4. Whether the entity was created by private or legislative action	4. Whether the government created the entity

Members of the Right to Know Advisory Committee:

In our discussions about an amendment to the FOAL that would cause a different result in the type of matter addressed by the Law Court in *Moore v. Abbott*, we have been unable to come up with language that would capture records of various private groups acting to provide input or advice to government without being overbroad. For example, I have not understood anyone to be advocating that if a legislative committee directs a number of stakeholders to get together and work out proposed compromise legislation, or if a school board suggests that parents talk to their friends and seek input on a controversial proposal, that the records of these groups should be required to be public. As a result, it was suggested that I draft a proposal that addresses the specific situation of an internal review undertaken by private citizen(s).

I would add this to 1 MRSA § 402(3-A), rewriting the existing language without substantive change, along the following lines. For clarity, I have italicized the part that addresses the *Moore v. Abbott* issue and have drafted this in a way that is designed to show what's changed and what is the same as current law.

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:

A. Criminal justice agency records:

1. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, conviction data, address of furlough and dates of furlough;

~~B.~~ 2. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, conviction data, address of residence and dates of supervision; and

~~C.~~ 3. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information.

B. Records of an individual or group charged by the governing body or head of an agency of government with undertaking a review of the agency's conduct with respect to an identified matter and making findings or recommendations, except those records that are otherwise confidential under this chapter.

This approach is intended to preserve application of other confidentiality provisions, such as the personnel laws, which should not be preempted.

Reinsch, Margaret

From: James Moore [author@suscom-maine.net]
Sent: Thursday, June 25, 2009 1:43 AM
To: Reinsch, Margaret; lwvme@gwi.net; Bellis, V. Kelly; Beverly Bustin Hathaway; Blocher, David M; Boulter, David; Cloutier, Mary; dwalker@preti.com; gilmour@maine.edu; Dunbar, Doug; Dunbar, Lisa; Ed Benedikt; Faye Luppi; Furlow, Rita; Giatas, Domna; Hurley, Donna; Jeff Austin; Ken Capron; koffman@acadia.net; koffman@coa.edu; Lawrencerobertt@aol.com; Linda Smith; Mahoney, Mike; maine.press@verizon.net; Matt Manahan; Mead, Larry; mmalloy@centralmaine.com; Moore, James P.; mrotundo@bates.edu; mtl@mtla.org; Nancy Gibson; O'Hanlon, Laura; Pam Lovley; Parr, Christopher; rhthompson@adelphia.net; Schroeder, Paul; schwartz@mainechiefs.us; Small, Mary; Sturtevant, Tom; Weston, SenCarol
Cc: McCarthyReid, Colleen
Subject: Re: Right to Know Advisory Committee meeting

The Court decided *Moore v. Abbott et al* based on their interpretation of the FOAA statute as it stands. The Legislature has the power and obligation to amend the statute if it desires to preserve the law's intent stated in its introduction:

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter. [1975, c. 758 (rpr).]

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent. [1975, c. 758 (rpr).]

It's significant that the Court did not dispute the proof that officials had concealed evidence, destroyed evidence and testified falsely at a criminal trial -- facts which constituted the background of the case before them. Nor did the Court endorse the private citizens' vague, inexplicable claim that there had been no official misconduct.

The loophole created by the Court's interpretation of FOAA is an invitation for government officials to "justify" acts or whitewash conduct which cannot stand the light of day. It benefits only those officials who wish to circumvent the basic purpose of FOAA by having a few private citizens issue conclusions regarding any proposed action or any allegation of misconduct without giving any reason or evidence supporting their decision.

If the Legislature wishes to retain the basic purpose of FOAA, it can and should close that loophole.

On the other hand, if you wish to render the FOAA impotent, simply do nothing.

|

Calendar for July–December 2009 (United States)

July						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
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August						
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December						
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Calendar generated on www.timeanddate.com/calendar

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6/17/09 | 15 comments

LAWSUIT

County's \$1.50 copy fee focus of court case

By **Bill Trotter**
BDN Staff

ELLSWORTH, Maine — In a case that could have costly implications throughout Maine, Hancock County is being sued by a private company that essentially wants free access to all of the electronic records filed in the county's registry of deeds.

Last fall, MacImage of Maine LLC filed a Freedom of Access Act request with the county in order to obtain electronic copies of documents in the county's deeds office. The county responded by directing MacImage to the county's Web site, where all of the documents requested by the company can be downloaded by anyone for \$1.50 a page.

MacImage, which asserts that the actual cost to the county of reproducing electronic copies of the documents is virtually nonexistent, then filed suit against the county in Cumberland County Superior Court.

MacImage, which is based in the town of Cumberland, also claims in a separate suit that the county owes it more than \$300,000 for work it has done for the registry of deeds.

Oral arguments in the civil trial were expected to be heard this week, but according to the county's attorney, Anthony Pellegrini of Bangor, the trial has been delayed, likely until sometime next month.

Pellegrini said Monday that the outcome of the case could have repercussions for many counties in Maine, if not all. If MacImage prevails, the ruling could erase all future revenue from deed-related paper and electronic copies, which likely would result in higher county tax bills across the state. Who would pay for paper copies, he noted, if anyone could get the electronic versions for free?

"It potentially has huge significance for every county in the state, to the extent that they have electronic copies of their documents," Pellegrini said.

John Simpson, the owner of MacImage, contends that what he is doing is no different from what many online services do. They offer some services such as viewing public documents for free and then charge a premium for other services, such as printing or downloading. All he is doing, with software his company has developed, is offering taxpayers a competitive choice.

"The law is very clear here," Simpson said Monday. "It says public officials can charge for the cost of copying."

With modern technology, he said, original documents in many offices — including deeds and related documents — are created electronically before they are ever copied for other parties, which means the subsequent cost of

reproducing them electronically is virtually nil.

"If they can demonstrate there is a cost, we'll be glad to pay it," Simpson said.

Pellegrini said it is the county's position that MacImage's lawsuit is without merit because his FOA request was not denied. He has access to the documents, the same as everybody else, at the same per-page rate that everyone else pays. The \$1.50 rate applies both to copies printed or downloaded off the county's Web site and to paper copies made at the registry of deeds office.

As part of its FOA lawsuit, MacImage has obtained a temporary restraining order against the county so that, while the case is pending, it has free access to all electronic copies on the county's registry of deeds Web site.

"There was no denial of the [FOA] request," Pellegrini said. "The fee charged by the [county] Web site is a legitimate fee."

Hancock County Clerk Cynthia Deprenger said Monday that the county always has charged for copies of public documents on file in its deeds office. This fee, which has changed in value over the years, is aimed at covering the expenses of reproducing the documents, she said.

Deprenger said the county doesn't believe it should have to provide copies of its documents free to a private company while it charges everyone else for the same thing. Deprenger said Simpson essentially is asking for preferential treatment.

"We feel like we've treated him as fairly as everybody else," she said. "But he's asking for more. He wants them for free."

Deprenger said that the county had expected to earn \$45,000 in revenue this year from electronic copies generated by the registry of deeds. The amount the county budgeted this year for revenue from paper copies made in the deeds office is \$100,000.

All counties charge fees for reproducing documents at their deeds registries, according to Deprenger.

"We're all pretty level across the board with what we charge," she said.

A separate suit filed by MacImage claims the county owes it more than \$300,000 for work the company has done for the registry of deeds in making documents available online.

According to Simpson, MacImage of Maine provided online document services to the Hancock County Registry of Deeds for nearly 10 years, including managing the county's deeds Web site, until last fall. He said he did work for the county at little to no charge because he had promised that it would pay his firm more substantially to pursue bigger projects later on.

Simpson said he even had a written agreement that the county would pay him for some work he already had done if it opted instead to hire a different

online document service firm for that later work. He alleges that the county did hire another firm, but then hid that decision from him and improperly denied him the chance to offer a competitive bid on the work.

Because of that prior agreement, Simpson said, the county owes his company more than \$300,000.

Simpson, who charges 75 cents a page for copies of the county's deed records on the MacImage Web site, said the reason he wants electronic copies of the documents even though he now is not doing any work for the county is that he wants to keep his Web site, which he claims is superior to the county's, up-to-date and competitive. That is why he filed the FOA request, he said.

Simpson, who acknowledged his lawsuit could have implications for every county in the state, put much of the blame for the disagreement between Hancock County and his firm on Julie Curtis, who was elected the county's register of deeds at the end of 2006.

Curtis, contacted Tuesday by phone, declined to get into specifics about the county's dispute with Simpson but said it predates her tenure in county government.

"This started before me," she said. "I'm not the cause of him not being welcome at the county [offices]."

Simpson stressed, however, that MacImage still is interested in working with the county and that he has tried and is still trying to negotiate a settlement with county officials.

"This is not the way I want to work," Simpson said. "There is an offer on the table that will cost the county nothing."

btrotter@bangordailynews.net

460-6318

June 29, 2009

Sen. Barry Hobbins, Chair
Right to Know Advisory Committee
Augusta, ME 04333

Re: LD 1271, An Act to Generate Savings by Changing Public Notice Requirements (Public Laws 2009, Chapter 256) and the General Issue of Public Notice

Dear Senator Hobbins,

Please consider this letter a request from the Maine Press Association for the Right to Know Advisory Committee to include LD 1271, An Act to Generate Savings by Changing Public Notice Requirements (Public Laws 2009, Chapter 256) and the issue of public notice posting in newspapers as part of its agenda for an upcoming meeting. LD 1271 changes the requirements for public notice of proposed rules in the newspaper with the intention of making the notices shorter, while maintaining the original requirements for public notice on the state's website. It removes from the newspaper notice the requirement to refer to the statutory or federal authority for the rule and replaces the requirement for the express terms of the proposed rule with a general statement on the substance.

Although LD 1271 only slightly shortens the public notice required to be posted in newspapers, past efforts by the members of the Legislature have sought to completely eliminate public notice from newspapers in favor of only posting public notice on a publicly accessible website. The latest efforts have taken place before the State and Local Government Committee where the context has been fiscal crisis and the focus has been how to save public funds. The Maine Press Association has opposed each of these efforts of legislators to shorten or eliminate public notice.

The Right to Know Advisory Committee is tasked with "ensuring access to public records and proceedings" and providing "general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government." The Maine Press Association believes that providing citizens with effective public notice of public meetings and actions is essential to maintaining the underlying principles of open government. We respectfully request that the Right to Know Advisory Committee review LD 1271 and the past efforts to shorten and eliminate public notice in newspapers. Our hope is that the Right to Know Advisory Committee can give this important issue a thoughtful review and analysis within the context of preserving the principles of open government and freedom of access, outside of the fiscal pressures of the legislative session.

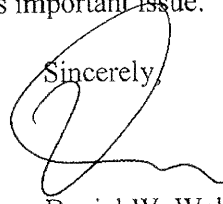
PRETI FLAHERTY

June 29, 2009

Page 2

Thank you very much for considering this important issue.

Sincerely,

A handwritten signature in black ink, appearing to be 'D. Walker', written over the word 'Sincerely,'.

Daniel W. Walker
Attorney for the Maine Press Association

DWW:rgp

cc: Margaret R. Reinsch, Committee Analyst
Tony Ronzio, Maine Press Association

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Generate Savings by Changing Public Notice Requirements

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §8053, sub-§3, as amended by PL 2007, c. 181, §§2 to 4, is further amended to read:

3. Contents of notice.~~The notice shall~~Except for notices governed by subsections 5 and 7, a notice under this section must:

- A. Refer to the statutory authority under which the adoption of the rule is proposed;
- B. State the time and place of any scheduled public hearing or state the manner in which a hearing may be requested;
- C. State the manner and time within which data, views or arguments may be submitted to the agency for consideration, whether or not a hearing is held;
- C-1. State the name, address and phone number of the staff person responsible for providing additional information or a printed version of the proposed rule;
- D. If possible, contain the express terms of the proposed rule or otherwise describe the substance of the proposed rule, stating the subjects and issues involved and indicate where a copy of the proposed rule may be obtained;
- E. Refer to the substantive state or federal law to be implemented by the rules; and
- F. Indicate where a copy of the statement of impact on small business pursuant to section 8052, subsection 5-A may be obtained.

Sec. 2. 5 MRSA §8053, sub-§5, as amended by PL 1991, c. 837, Pt. A, §11, is further amended to read:

5. Publication.~~The~~Using the format of notice pursuant to subsection 7, the Secretary of State shall:

- A. Arrange for the weekly publication of a consolidated notice of rule making of all state agencies, which shall also include a brief explanation to assist the public in participating in the rule-making process. Notice of each rule-making proceeding shall be published once 17 to 24 days prior to the public hearing on the proposed rule or at least 30 days prior to the last date on which views and arguments may be submitted to the agency for consideration if no public hearing is scheduled;
- B. Designate certain newspapers, which together have general circulation throughout the State, as papers of record for the purpose of publishing notice under paragraph A. Notice of proposed rules affecting only a particular locality or region need only be published in the designated newspapers having general circulation in the area affected-;

Subsection 5, paragraph B should end with a semicolon.

C. Designate one day as rules day for publication of notices on rulemaking as set forth in this subsection; and

D. Be reimbursed for the cost of publication of rule-making notice by the agencies proposing the rulemaking. The total costs of each consolidated publication will be prorated by the Secretary of State among all agencies submitting notice for a particular week.

Sec. 3. 5 MRSA §8053, sub-§6, as enacted by PL 2007, c. 581, §3, is amended to read:

6. Electronic publication. In addition to the printed publication required in subsection 5, the Secretary of State shall maintain a publicly accessible website for posting the notices of all proposed and adopted rules. ~~The notice must include a brief explanation of the proposed or adopted rule and an e-mail link to the agency liaison. Departments and agencies shall either post proposed and adopted rules in their jurisdictions on publicly accessible agency websites or link to the rules posted on the Secretary of State's website. The contents of the notice for electronic publication are pursuant to subsection 3.~~ Notice of each rule-making proceeding must be published on the Secretary of State's website 17 to 24 days prior to the public hearing on the proposed rule or at least 30 days prior to the last date on which views and arguments may be submitted to the agency for consideration if no public hearing was scheduled.

Sec. 4. 5 MRSA §8053, sub-§7 is enacted to read:

7. Contents of notice for newspaper publication. The notice for publication in the newspaper under subsection 5 is shorter than the notice provided for all other purposes pursuant to subsection 3. The notice for newspaper publication must:

- A. State the time and place of any scheduled public hearing or state the manner in which a hearing may be requested;
- B. State the manner and time within which data, views or arguments may be submitted to the agency for consideration, whether or not a hearing is held;
- C. State the name, address and phone number of the staff person responsible for providing additional information or a printed version of the proposed rule;
- D. Include a brief and general summary of the substance of the proposed rule;
- E. Provide the website address where the long notice pursuant to subsection 3 is posted;
- F. Indicate where a copy of the statement of impact on small business pursuant to section 8052, subsection 5-A may be obtained; and
- G. Indicate the impact on municipalities or counties only if there is an expected financial impact on municipalities identified under section 8063.

PUBLIC Law, Chapter 256 LD 1271, item 1, 124th Maine State Legislature
An Act To Generate Savings by Changing Public Notice Requirements

Effective 90 days following adjournment of the 124th
Legislature, First Regular Session, unless otherwise indicated.